

12-12-06

**Ex Parte**

Ms. Marilyn Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311

Dear Ms. Dortch,

This notice is to record our ex parte meeting(s) with the staff for Commissioners Adelstein, MacDowell, Tate, Martin, and Copps. We stated our concerns directly via phone, via voicemail and by fax on December 12<sup>th</sup>. Our comments are summarized as follows:

We unite with Alliance for Community Media members in calling for competition without destruction of local, community controlled media.

1) The proposed rule eliminates incentive for providers to negotiate in good faith. If the city and the provider do not come to agreement within 90 days, the provider can proceed without an agreement. This would lead to providers stalling on negotiations and then they can then make billions of dollars using our public land without considering local needs. This framework would be unreasonable.

2) The proposed rule lacks a remedy for geographic discrimination. Public, Education and Government Access, or PEG, are tools to engage our local communities in democracy. Democratic participation should be for all, not based on a company business rule. The public-right-of-way is owned by all in our community, not just those in an area lucky enough to be served. We believe that inevitable market imbalances must be anticipated by the FCC, as they were by Congress, and that any rule-making must provide these three elements:

- A) A standard for identifying imbalances in service.
- B) A party responsible for identifying the imbalance—logically, the municipality.
- C) A means for prevention or remedy of the imbalance.

3) The proposed rule reduces the support for PEG or other community media services from what is allowed by current Federal law. We believe this is an

arbitrary reduction which will hurt our communities. It is in direct contradiction to language authored by telephone companies and already passed in key states such as California and Texas. This reduction would eliminate a valued community resource with no demonstrated effect on either subscriber price or level of competition. Our organization delivers media services to thousands of individuals and organizations every year. Amongst the projects we are involved with is the delivery of educational services to public schools and charter schools in New Mexico. This legislation would severely impact this effort that has been organized in line with the stated Federal policy of "No Child Left Behind." There is no good reason to take this action that would set back the public sector of media and community media in particular by decades and impact school programs in contradiction to stated federal government policy. Any new legislation should be looking to increase, not decrease public participation in media and educational opportunities throughout the U.S.

- 4) The changes being proposed to the law are dramatic. We believe that such changes to the law should be made by Congress, not the FCC. These changes will slow competition by confusing the legal framework. Such changes should be decided by law-makers, not the courts. The FCC should not usurp Congressional authority.
- 5) The future of media in the U.S. is becoming a key issue for our development in this country. A new comprehensive telecommunications bill needs to be enacted that places the public interest first thus returning to the original intent of the 1934 Communications Act. We need the FCC to work with Congress to re-establish this basic principal.

We look forward to working with the FCC to establish a process which supports both genuine competition and community fairness. Please contact us if you have questions or comments.

Sincerely,

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